Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Deployment of Wireline Services	)	
Offering Advanced Telecommunications	)	CC Docket No. 98-147
Capability	)	

COMMENTS OF NEXTLINK COMMUNICATIONS, INC.

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SUMMARY

NEXTLINK is a facilities-based competitive local exchange carrier with high capacity, fiber optic networks in 33 markets in 11 states. NEXTLINK's continued growth requires a regulatory environment that fosters competition and ensures that the incumbent carriers cannot exercise their monopoly power in a way that impedes competitive entry. The Commission should not permit incumbents to embark on an "alternative pathway" without building in adequate competitive safeguards and adopting uniform standards for collocation and local loop unbundling.

Separate Affiliates. The proposed separate subsidiary requirement does not sufficiently address the incentive for incumbent LECs to discriminate against competitors. The history of the cellular industry provides numerous well-documented examples of the separate subsidiary mechanism failing to curb anti-competitive behavior by the BOCs. If the Commission decides to permit incumbent LECs to offer advanced service through a separate affiliate, additional safeguards are necessary to preclude the incumbents from favoring their affiliates to the detriment of competition:

- The Commission must ensure that there are meaningful restrictions on the sharing of information between the incumbent parent and the advanced services affiliate.
- The incumbent LEC must be precluded from transferring any facilities to its advanced services affiliate that would degrade the incumbent LEC's existing network to the point that it would "impair the ability" of competitors seeking access to the incumbent LEC's network to provide telecommunications services. For instance, incumbent LECs should not be permitted to transfer DSLAMs to their advanced services affiliates.
- The Commission should require advanced services affiliates to take the same OSS that the competitive LEC gets.
- Incumbent LECs should be required to tariff all aspects of their relationships with their advanced services affiliates so that competitors may obtain access to particular services

and facilities without being forced to agree to all the terms of a contract between the incumbent and the affiliate.

- The Commission should require each incumbent LEC to submit a compliance plan that demonstrates how it will ensure that its advanced services affiliate truly will be separate.

Collocation. Based on its experiences in the states, NEXTLINK proposes the following national uniform rules governing collocation:

- The Commission should require incumbent LECs to tariff their rates, terms, and conditions for collocation and adopt written procedures for handling collocation requests.

- ILECs should be required to set reasonable performance intervals for each stage of the collocation process. For example, ILECs should be required to provide quotes regarding the price and availability of collocation within ten to fifteen days, deliver standard collocation cages within 90 days, and provide conditioned space within 120 days.

- ILECs and their advanced services affiliates should be held to the same "anti-warehousing" rules that ILECs impose on competitive LECs. Furthermore, the Commission should require ILECs to remove obsolete equipment or move non-essential offices to respond to CLEC requests for collocation space, which is how the ILECs respond to their own needs for additional space for equipment.

- Where physical collocation is not available, NEXTLINK and other competitive LECs should be able to accomplish "collocation via nearby location" rather than virtual collocation, if they choose, because this method of collocation provides the competitive LEC with continued physical control over its equipment.

Local Loop Unbundling. NEXTLINK proposes the following rules for local loop unbundling:

- Competitive LECs should receive detailed and timely information from incumbent LECs regarding the infrastructure the ILECs are deploying in the field. This information should be provided during the OSS ordering process on a central office-by-central office basis and should not be made available to the incumbent's advanced services affiliate until it is made available to its competitors.

- The Commission should clarify that incumbent LECs must provision loops currently carried on IDLC through all technically feasible methods.

- The Commission should also make clear that a competitive LEC does not need to collocate at an ILEC's remote switch to gain access to unbundled loops served by the remote switch if the competitive LEC is collocated at the central office of the host switch for that remote switch. It is technically infeasible and economically impossible for

competitive LECs to collocate at every remote switch. Instead, the ILEC should be required to provide competitive carriers with access to unbundled loops, including multiplexing, cross-connects, and transport to the competitive LEC's collocation premises at the central office of the remote switch.

LATA Boundary Modifications. The BOCs' LATA modification requests are tantamount to requests for outright waivers of LATA boundaries and should be rejected. If the BOCs want to enter the in-region, interLATA data services market, they must comply with the requirements of section 271.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
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Deployment of Wireline Services Offering Advanced Telecommunications Capability	)))	CC Docket No. 98-147

COMMENTS OF NEXTLINK COMMUNICATIONS, INC.

NEXTLINK Communications, Inc. ("NEXTLINK"),[1/] by its attorneys, hereby submits its comments in response to the above-captioned Notice of Proposed Rulemaking.[2/] The NPRM proposes an "alternative pathway" for incumbent local exchange carriers ("ILECs") to provide advanced services through a separate affiliate, and seeks comment on proposals for uniform collocation standards, local loop unbundling, and LATA boundary modifications.

NEXTLINK is concerned that the proposed separate subsidiary requirement does not sufficiently address the incentive for incumbent LECs to discriminate against competitors. Additional safeguards are necessary to ensure the competitive market for advanced services is not harmed, including meaningful restrictions on the sharing of information and the transfer of facilities between the incumbent parent and the advanced services affiliate.

[1/] NEXTLINK is a facilities-based competitive local exchange carrier with high capacity, fiber optic networks in a growing number of markets across the United States. NEXTLINK currently operates 18 facilities-based networks providing switched local and long distance services in 33 markets in 11 states. NEXTLINK anticipates adding or expanding markets to have approximately 21 million addressable lines by the end of 1999.

[2/] Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Memorandum Opinion and Order and Notice of Proposed Rulemaking, FCC 98-188 (rel. August 7, 1998) ("Section 706 NPRM").

From its experiences with ILECs at the state level, NEXTLINK also has several specific proposals on collocation and local loop unbundling detailed below.

I. PROVISION OF ADVANCED SERVICES THROUGH A SEPARATE AFFILIATE

In the Section 706 NPRM, the Commission proposed an alternative pathway for incumbent LECs to provide advanced services through an affiliate that is "truly separate from the incumbent."[3/] This separate affiliate would not be deemed an incumbent LEC and accordingly would not be subject to incumbent LEC regulation, including the unbundling, interconnection, and collocation obligations of section 251(c).

The use of a separate advanced services affiliate may assist the Commission in detecting anti-competitive behavior, but, as the Commission's prior experience demonstrates, it will not diminish the incentive for incumbent LECs to discriminate against competitors. If the Commission decides to permit ILECs to offer advanced services through separate affiliates, additional safeguards as detailed below are needed to prevent the ILECs from favoring these affiliates over third-party competitors.

A. The Commission's Experience in the Cellular Market Demonstrates that Separate Affiliates May Assist in the Detection of Anti-Competitive Behavior, But Will Not Diminish the Incentive for Incumbent LECs to Discriminate Against Competitors

The limited utility of separate subsidiaries as an anti-competitive safeguard is well documented in the cellular industry where the in-region B-block cellular licenses set aside for each BOC are required by the Commission to be held in separate subsidiaries. The Commission reasoned that as long as the BOCs were required to treat their separate subsidiary in the same

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3/ Section 706 NPRM at ¶ 83.

manner as their competitors, anti-competitive activity would be curbed.[4/] In fact, the BOCs responded by deliberately handicapping their own affiliates in order to avoid providing reasonable and efficient interconnection arrangements to non-affiliated wireless carriers. This state of affairs persisted for more than a decade until the passage of the Telecommunications Act of 1996.

For example, the Commission's early decisions to require the BOCs to provide interconnection to non-wireline carriers on terms no less favorable than those offered to their own affiliates were intended to prevent the BOCs from discriminating against non-wireline cellular carriers in favor of their own wireline affiliates.[5/] The BOCs responded by refusing to provide reasonable and efficient interconnection arrangements – such as trunkside (Type 2) interconnection -- to any wireless carrier, including their own affiliates.[6/] After more than five years of persistent problems, the Commission was required to intercede and issue a policy statement setting forth standards for LEC-to-cellular interconnection.[7/]

In addition to denying wireless carriers reasonable and efficient interconnection arrangements, the BOCs historically used their monopoly power to charge wireless carriers exorbitant interconnection rates and deny them reciprocal compensation for the termination of

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[4/] Cellular Communications Systems, 86 FCC 2d 469 (1981), recon,89 FCC 2d 58, 80-82 (1982).

[5/] Id. at 496.

[6/] See Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services, Notice of Proposed Rulemaking and Notice of Inquiry, 9 FCC Rcd 5408, 5450 (1994) (describing history of LEC and cellular interconnection negotiations, including the time during which LECs refused to provide trunkside interconnection to non-wireline carriers).

[7/] See Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, Memorandum Opinion and Order, 59 RR 2d 1275 (1986).

traffic. At the time the Commission launched its local competition proceeding, wireless carriers were paying an average of 2.5 cents a minute for interconnection – a rate that in some cases was five times more than rates charged to competitive LECs. The wireline affiliated carriers were notoriously absent from the battle for fair wireless interconnection rates and terms -- both at the Commission and in the states -- because for them the payment of inflated interconnection bills was merely a "pocket to pocket" transfer from the subsidiary to the parent. The payment of inflated and unreasonable interconnection fees by nonaffiliated carriers, however, lined the pockets of their direct competitors and impaired their ability to effectively compete. Interconnection rates and the issue of reciprocal compensation only began to be reformed after the passage of the Telecommunications Act of 1996, more than a decade after the commercial deployment of cellular networks.

Once the BOCs were permitted to acquire out-of-region non-wireline cellular licenses, the domination of the parent BOC over its out-of-region wireless subsidiaries became even more striking. For example, in 1992, a consortium of non-wireline carriers instituted the North American Cellular Network ("NACN") to promote automatic roaming among its members and other service features that would make the carriers more competitive with their wireline counterparts. All of the non-BOC affiliated, A-block carriers joined the NACN. None of the BOCs allowed their A-block licensees to join, presumably because it would present a competitive threat to their in-region properties.

The history of AirTouch Communications illustrates the pro-competitive distinctions between requiring the establishment of a wholly independent enterprise, as opposed to a separate subsidiary. AirTouch's predecessor, the wireline affiliate of Pacific Telesis, consistently aligned itself with its parent on policy matters, even when that position was to its detriment. When

Pacific Telesis' wireless properties were spun-off into the newly created, independent AirTouch Communications, AirTouch became one of the most high profile, vocal advocates for wireless interests. In fact, AirTouch has filed complaints against its former parent for refusing to pay reciprocal compensation and for denying it the ability to deploy "calling party pays."[8/]

B. Competition, Not Separate Affiliates, Will Lead to Lower Prices, Greater Customer Choice, and Rapid Deployment of Advanced Telecommunications Facilities and Services.

Throughout this proceeding, the incumbent LECs have argued that without regulatory relief they have little, if any, incentive to deploy advanced data telecommunications services. The Commission, however, cannot ignore contradictory record evidence that demonstrates the BOCs are either currently deploying or have announced plans to invest and deploy advanced telecommunications services throughout the nation. Competition and the actions of facilities-based competitors in the marketplace are the driving forces behind the incumbent LEC's efforts to innovate, invest, and deploy advanced services. As testimony at the Commission's En Banc Hearing on Bandwidth and comments on the Section 706 NOI demonstrate, facilities-based competitors believe that the best way to speed the deployment of advanced data facilities and services is for the Commission to hold firm on its local competition rules and enforce the statutory and regulatory requirements of sections 251(c) and 271.[9/]

[8/] In the Matter of AirTouch Cellular v. Pacific Bell, FCC Formal Complaint # E-97-46 (filed Sept. 19, 1997); AirTouch Cellular v. Pacific Bell, California Public Utilities Commission (December 1997).

[9/] In the Matter of En Banc Hearing July 9, 1998, Transcript at 11, 15, 23, available at <http://www.fcc.gov/enbanc/070998/eb070998.html>; In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket 98-146, Comments of e.spire at 8-9, DSL

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C. The Commission Must Ensure that Adequate Safeguards Are in Place Before It Permits Incumbent LECs to Utilize a Separate Affiliate to Provide Advanced Services.

If the Commission nevertheless decides to adopt its proposal to permit incumbent LECs to offer advanced services through a separate affiliate, it must ensure that adequate safeguards are in place. The separate affiliate must truly be separate from its incumbent parent. The Commission has asked for comment on the type of structural separation requirements that should be sufficient for an advanced services affiliate to be deemed a non-incumbent LEC and its proposal to use the structural separation and nondiscrimination requirements of section 272 as implemented in the Non-Accounting Safeguards Order.[10/] NEXTLINK respectfully submits that the requirements adopted in the Non-Accounting Safeguards Order are not sufficient. Additional safeguards are necessary to ensure the competitive market for advanced services is not harmed.

1. The Commission Must Ensure That There Are Meaningful Restrictions on Information Shared Between the Incumbent and the Affiliate.

First, the Commission must ensure that there are meaningful restrictions on the sharing of information between the incumbent parent and the advanced services affiliate. The Commission must prevent situations in which information that a competitive LEC has provided to an incumbent LEC for one reason, such as a request for unbundled loops, can be utilized by the incumbent LEC or its affiliates for other purposes, such as targeting its marketing toward potential competitive LEC customers. In fact, it appears that incumbent LECs are currently

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Access Telecommunications Alliance at 9, AT&T Corp. at 42-48, MCI Communications and WorldCom Inc. at 8, 23, and Qwest Communications Corporation at 22.

misusing information that they obtain in providing unbundled elements to NEXTLINK to benefit their own retail operations in violation of Section 222 of the Communications Act. NEXTLINK customers and potential customers have reported having been contacted by the incumbent LEC shortly after NEXTLINK has requested a customer service record ("CSR") from the incumbent LEC. The Commission must not underestimate the power of such information, and the detrimental impact that an incumbent LEC's improper use of such information will have on competition.[11/]

The Commission asks whether use by an affiliate of customer proprietary network information ("CPNI") gathered by an incumbent LEC is a factor that should be relevant in making the determination that an affiliate is an assign of the incumbent LEC.[12/] NEXTLINK agrees that the sharing of information is relevant to a determination of whether the affiliate is an assign or is truly a separate affiliate.

In order for an advanced services affiliate to be deemed separate, the Commission should prohibit incumbent LECs from providing any proprietary information (including CPNI and customer credit information) to the affiliate except upon terms and conditions that have been previously agreed upon by other carriers. Imposing such a restriction would depart from the Commission's decision in the CPNI Order not to restrict the sharing of CPNI among the various

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[10/] Section 706 NPRM at ¶ 96 (citing Non-Accounting Safeguards Order, 11 FCC Rcd 21905, 22055 (1996).

[11/] AT&T Communications of California v. Pacific Bell, No. C-96-1691-SBA, 1996 WL 940836 (N.D. Cal. 1996), aff'd 108 F.3d 1384 (9th Cir. 1997) (granting preliminary injunctions to prohibit Pacific Bell from using long distance carriers' proprietary information).

[12/] Section 706 NPRM at ¶ 113.

affiliates of a carrier that are currently providing service to the same customer.[13/] As Commissioner Ness recognized in her dissenting statement, however, permitting an advanced services affiliate to automatically access the incumbent LEC's entire record on the customer would provide the affiliate with a distinct advantage over its competitors.[14/] In light of the inevitable incentive the incumbent LEC will have to favor its advanced services affiliate, the Commission should eliminate such an obvious means of discrimination. This limitation on the use of CPNI should prevent incumbent LECs from openly sharing such information with its advanced services affiliates on terms that are onerous for other carriers but not for the affiliate. The Commission should also make clear that the requirement that the incumbent and the affiliate maintain separate books, records, and accounts also prohibits the incumbent and the affiliate from utilizing the same computer system.

2. The Commission Must Ensure That Facilities Are Not Transferred to a Separate Affiliate to the Detriment of Competition

The Commission recognizes that in order for an advanced services affiliate not to be subject to section 251(c), it cannot be a "successor or assign" of the incumbent LEC. Under Commission precedent, if a BOC transfers to an affiliated entity ownership of any network elements that must be provided on an unbundled basis under section 251(c)(3), the entity is deemed to be an assign with respect to those network elements.[15/] The Commission tentatively

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[13/] In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket Nos. 96-115, 96-149, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-27 at ¶¶ 51-52 (rel. Feb. 26, 1998) ("CPNI Order").

[14/] Id., Statement of Commissioner Susan Ness Dissenting in Part.

[15/] Section 706 NPRM at ¶ 105.

concludes that a wholesale transfer of facilities to an affiliate used to provide advanced services, including but not limited to digital subscriber loop line multiplexers ("DSLAMs") and packet switches, would make the affiliate an assign, as would the transfer of any local loops.[16/] NEXTLINK agrees with this conclusion, but suggests that the Commission's inquiry should not be limited to whether the facilities transferred are elements that must be provided on an unbundled basis under section 251(c)(3) because it is difficult to devise an appropriate definition of transferable facilities that will not rapidly become obsolete. Rather than creating a list of specific elements that are not permissible for an incumbent to transfer to its affiliate, the Commission should ask whether the transfer will degrade the incumbent LEC's existing network to the point that it would "impair the ability" of competitors seeking access to the incumbent LEC's network to provide telecommunications services. See 47 U.S.C. §§ 251(c)(3), 251(d)(2)(B).

DSLAMs. The Commission proposes a "de minimis" exception under which a limited transfer of equipment used specifically to provide advanced services, such as DSLAMs, packet switches, and transport facilities, would not make an advanced services affiliate an assign of the incumbent LEC.[17/] Implied in this proposal is the tentative conclusion that DSLAMs could be placed in the separate affiliate, beyond the reach of competitors seeking unbundled network elements pursuant to section 251(c)(3). If adopted, such a conclusion would frustrate the ability of facilities-based competitors like NEXTLINK to offer advanced services.

[16/] Section 706 NPRM at ¶¶ 106-7.

[17/] Section 706 NPRM at ¶ 108.

To provide DSL service to a particular customer or customers, there must be a DSLAM in the central office serving that customer or customers. On the customer side, the DSLAM supports the transmission of both voice and data over the existing twisted-pair copper infrastructure with the use of ADSL transceivers. On the central office side, the DSLAM separates the voice from the data and routes these services onto separate networks optimized to support them. In effect, each central office must have a DSLAM to provide market-wide DSL service. Because of their ratepayer-funded economies of scale and scope, however, only the incumbent LECs can afford to locate a DSLAM in every central office. Incumbent LECs should not be permitted to transfer DSLAMs to their advanced services affiliates and thereby keep them from competitors who otherwise could obtain unbundled access to them under section 251(c)(3). ILECs have a continuing obligation to provide nondiscriminatory access to facilities, like DSLAMs, that the ILECs can deploy more efficiently because of their ratepayer-funded economies of scale and scope.

Operations Support Systems ("OSS"). In the Section 706 NPRM, the Commission emphasized that incumbent LECs must provide competitive LECs with non-discriminatory access to OSS.[18/] The Commission explained that an incumbent LEC does not meet this non-discrimination requirement if it has the capability to identify xDSL-capable loops, but relegates competitive LECs to a slower and more cumbersome process to obtain that information. The Commission also should make clear that the advanced services affiliate must take the same OSS that the competitive LEC gets.

[18/] Section 706 NPRM at ¶ 56.

Compliance Plan. The Commission should require each incumbent LEC to submit a compliance plan that demonstrates how it will ensure that its advanced services affiliate truly will be separate. The Commission should adopt reporting requirements so that the Commission and the incumbent LEC's competitors can monitor its compliance. The compliance plan and the reporting requirements adopted in New York's 271 proceeding provide a useful template.[19/] The Commission should not presume that just because the incumbent is charging the same rates to its affiliate and to competitors that those rates are reasonable. As set forth above, in the cellular context incumbent LECs were willing to charge unreasonable cellular interconnection rates even though their own affiliates were required to incur these charges.

Tariffs. Incumbent LECs should be required to tariff all aspects of their relationships with their advanced services affiliates. Permitting incumbents to memorialize their relationship with affiliates through written contracts is insufficient in light of the Eighth Circuit's decision in Iowa Utilities Board v. FCC that competitors may not "pick and choose" useful elements of an interconnection agreement involving an incumbent LEC.[20/] Given the court's constraining interpretation of section 252(i), competitors would have to agree to all of the terms of a contract between the incumbent and its affiliate in order to get the same pricing or other conditions that the affiliate is getting.

[19/] Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996, New York Public Service Commission, Case No. 97-C-0271.

[20/] 120 F.3d 753, 800-801 (8th Cir. 1997), cert granted sub nom AT&T v. Iowa Utilities Board, 118 S. Ct. 879 (1998).

The contract an incumbent LEC signs with its separate affiliate, however, is likely to include terms and conditions that make it unusable for competitors of the affiliate, such as large volume requirements and long-term commitments. Indeed, the incumbent LEC and the affiliate will have every incentive to devise such an unusable contract. To address this problem, the Commission should require each incumbent to tariff all the aspects of its relationship with its advanced services affiliate, so that competitors can purchase only those services they need from the tariff.[21/]

II. COLLOCATION

A. The Commission Should Adopt Additional National Collocation Rules

The Commission has asked for comment on additional national collocation rules that it should adopt in order remove barriers to entry and speed the deployment of advanced services.[22/] NEXTLINK agrees that the adoption of uniform collocation standards would encourage the deployment of advanced services by increasing predictability and certainty and would facilitate the entry of competitors, like NEXTLINK, that provide advanced services in multiple states.

Tariffs. The Commission proposes that an incumbent LEC submit, to each requesting competitive carrier, a report indicating the incumbent LEC's available collocation space, including the amount of collocation space available at each requested premises, the number of

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[21/] Even if an incumbent LEC's provision of services and facilities to its affiliate were reduced to a contract, the Commission has the authority to require the incumbent to make particular elements of such a contract available to competitors in order to prevent the kind of anticompetitive practices described above, notwithstanding the Eighth Circuit's decision. Such a requirement would be an additional safeguard against discrimination by an incumbent that establishes a separate affiliate, based on the Commission's general implementation power under section 4(i) and its more specific responsibility to prevent cross-subsidy, 47 U.S.C. § 254(k).

[22/] Section 706 NPRM at ¶ 123.

collocators, any modifications in the space since the last report, and any measures the incumbent LEC is taking to make additional space available for collocation.[23/] While such information would be very helpful, the Commission also should require incumbent LECs to tariff their rates, terms, and conditions for collocation and adopt written procedures for handling collocation requests, including non-discrimination requirements. Reporting requirements are also necessary so that the Commission and the incumbent LEC's competitors can monitor its compliance with these procedures and requirements. If the Commission adopts its proposal for separate advanced services affiliates, then the need for written collocation procedures and non-discrimination rules will be even greater so that competitors can ensure that they receive collocation on the same terms and conditions as the ILEC's advanced services affiliate.

Collocation Intervals. Another barrier to entry that competitive LECs face is the lengthy delay between a request for collocation and the final delivery of an acceptable collocation cage. The Commission should speed this process by requiring ILECs to set reasonable performance intervals for each stage of the collocation process. For example, the FCC should require ILECs to provide quotes regarding the price and availability of collocation within ten to fifteen days, deliver standard collocation cages within 90 days, and provide conditioned space within 120 days. The Commission should also adopt self-enforcing penalties that trigger when an ILEC fails to comply with these performance intervals. Self-enforcing penalties will ensure that ILECs have an incentive to comply with the collocation performance intervals. In addition, reporting requirements will also be necessary in order to measure ILEC compliance.

[23/] Section 706 NPRM at ¶ 147.

Warehousing. In the Section 706 NPRM, the Commission acknowledged that "[o]ne of the major barriers facing new entrants that seek to provide advanced services on a facilities basis is the lack of collocation space in many LEC central offices.[24/] The Commission seeks comment on measures that would help ensure that sufficient collocation space will be available in the future, including proposals to modify the Commission's rules regarding warehousing of space.[25/]

Today, incumbent LECs not only have the ability to deny access to central offices in order to warehouse space for their potential future needs, they can also impose specific "anti-warehousing" rules under which competitive LECs lose collocation space if they do not use their assigned space within a certain period of time (generally six months). Incumbent LECs should be held to the same standard and should be required to use space within the same timeframe that they grant competitive LECs. The incumbent LEC's advanced services affiliate must also be held to the same standard. As set forth above, reporting requirements need to be in place so that competitive LECs can determine that the separate affiliate is not receiving special treatment.

Removal of Obsolete Equipment and Non-Essential Operations. When incumbent LECs need additional space for their own equipment, they frequently create such space by removing deactivated or obsolete equipment and moving non-essential administrative offices or storage to other floors or buildings. These same incumbent LECs, however, fail to remove such equipment or relocate offices and quickly declare a lack of central office space when CLECs apply for collocation. Such practices are effectively indistinguishable from the practice of warehousing

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[24/] Section 706 NPRM at ¶ 145.

[25/] Section 706 NPRM at ¶ 149.

space and the Commission should require incumbent LECs to remove obsolete equipment or move non-essential offices in order to respond to CLEC requests for collocation space.

Premises Tours. The Commission proposes that an incumbent LEC that denies a request for physical collocation due to space limitations should allow any competing provider that is seeking physical collocation at the incumbent LEC's premises to tour the premises. NEXTLINK supports this proposal and can speak from experience about the benefits of such tours. For example, NEXTLINK was able to secure physical collocation space in a US WEST central office in Spokane, Washington as a result of a recent premises tour. US WEST had initially denied NEXTLINK's request for collocation space in Spokane based on a claim of a lack of space. The Washington State Commission, however, required US WEST to conduct a premises tour. During the premises tour Commission staff observed that US WEST had prominently tagged numerous pieces of equipment within the central office as no longer being in service. The tour not only revealed that the "tagged" equipment was no longer in service, but it also became apparent that this equipment was no longer being accounted for in US WEST's continuing property records. Thus, this recent premises tour in Spokane demonstrates the need for uniform national rules that would require ILECs to permit competitive LECs to tour central offices in circumstances where ILECs claim that no central office space is available.

B. Alternative Methods of Collocation

The Commission seeks comment on any other alternative physical collocation arrangements that it should require to lower the cost of collocation and facilitate competition in the advanced services marketplace[26/] and on measures that would facilitate the use of virtual

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[26/] Section 706 NPRM at ¶ 142.

collocation for the provision of advanced services.[27/] NEXTLINK is concerned that a shortage of physical collocation space will arise in more central offices as competition in the local exchange market continues to expand. For this reason, in several state proceedings NEXTLINK has proposed that in circumstances where no space exists on an incumbent LEC's premises for physical collocation, NEXTLINK should be permitted to place its equipment in a nearby location and obtain interconnection with the incumbent LEC's central office as if it were physically collocated.[28/] This method of interconnection, which NEXTLINK refers to as "collocation via nearby location," provides NEXTLINK with continued physical control over its equipment and is NEXTLINK's preferred option where physical collocation is not available.

Incumbent LECs offer collocation arrangements in order for competitive LECs to interconnect and access network elements such as unbundled loops. Under a physical collocation arrangement, a competitive LEC owns and has complete control over its facilities, which are located within a collocation "cage" in the incumbent LEC's central office. When no space is available in an incumbent LEC's central office for a physical collocation arrangement, most incumbent LECs will provide virtual collocation to the competitive LEC. Under a virtual collocation arrangement, the incumbent LEC acquires equipment that it uses to provide

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[27/] Section 706 NPRM at ¶ 148.

[28/] See, e.g., Petition of NEXTLINK TENNESSEE L.L.C. for Arbitration of an Interconnection Agreement with Bell South Telecommunications, Inc., Tennessee Regulatory Authority, Docket No. 98-00123, Direct Testimony of Russell Land (filed July 28, 1998); Petition of NEXTLINK PENNSYLVANIA L.L.P. for Arbitration of an Interconnection Agreement with Bell Atlantic-Pennsylvania, Inc. Pursuant to 47 U.S.C. § 252, Pennsylvania Public Utilities Commission, Docket No. A-310260-F0002, Post Arbitration Brief of NEXTLINK PENNSYLVANIA L.L.P. (filed May 8, 1998).

interconnection and access to the competitive LEC. The competitive LEC does not own the equipment or have any access to or control of the equipment used on its behalf.

Collocation via a nearby location is a means for NEXTLINK and other competitive LECs to maintain the same control over and access to their equipment that they have under a standard physical collocation arrangement, in circumstances where no space exists on an incumbent LEC's premises for physical collocation. A nearby space is substituted for the "collocation cage" used in a physical collocation arrangement. Because NEXTLINK proposes to use nearby locations, the differences in distance would not affect the methods through which NEXTLINK would otherwise interconnect or gain access to the incumbent LEC's unbundled elements. Having control and free access to its own equipment is important to NEXTLINK's ability to provide its customers with uninterrupted quality service in the most efficient manner and provides NEXTLINK with the greatest ability to ensure that it has sufficient facilities in place to provide service.[29/] In a virtual collocation arrangement, where an incumbent LEC owns the equipment used by the competitive LEC, the incumbent simply does not have the same incentive that NEXTLINK itself has to maintain its facilities.[30/]

Certain incumbent LECs have objected that this arrangement would exhaust capacity in the conduit and manholes leading into their central offices. NEXTLINK proposes this arrangement as

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[29/] The FCC has recognized that physical collocation "best ensures that [carriers] are provided interconnection on the same terms and conditions as [ILECs] interconnect their own circuits." Expanded Interconnection Order, 7 FCC Rcd 7369, 7389 (1992).

[30/] In a virtual collocation arrangement, NEXTLINK must also pay the expenses of training an incumbent LEC employee that NEXTLINK does not control to work on NEXTLINK equipment. If another CLEC that obtains virtual collocation at a later date, or the ILEC itself, uses the same equipment for which NEXTLINK has paid for training of an ILEC employee, then the CLEC or ILEC should be required to reimburse NEXTLINK for a pro-rata share of the training expenses.

an alternative to actual physical collocation. It would be necessary only when an incumbent LEC cannot free enough space in a central office to provide for physical collocation. The extent to which NEXTLINK or another competitive LEC would use this method of collocation is therefore largely within the incumbent LEC's control. Use of this alternative arrangement would deprive incumbent LECs of the substantial revenue they receive from physical and virtual collocation arrangements. This loss of revenue may be the true source of incumbent LEC objections to this and other similar proposals.

III. LOCAL LOOP REQUIREMENTS

The Commission has asked for comment on rule changes that it could adopt under section 251 that would improve the ability of new entrants to gain access to xDSL-compatible loops and remove barriers to entry and speed the deployment of advanced services.[31/] NEXTLINK has specific suggestions for relief that the Commission should grant based on NEXTLINK's experiences in the states.

A. The Commission Should Require Incumbents LECs to Provide Competitive LECs with Sufficient Information Regarding their Infrastructure and Deployment of Technology.

The Commission seeks comment on the type of information that is currently available to incumbent LECs and whether the same quality of information is being provided to new entrants.[32/] It is absolutely vital that competitive LECs like NEXTLINK receive detailed and timely information from incumbent LECs regarding the infrastructure they are deploying in the field. Deployment information should be provided to competitive LECs during the OSS ordering

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[31/] Section 706 NPRM at ¶¶ 151, 154.

[32/] Section 706 NPRM at ¶ 158.

process so that they can determine in advance whether they will be able to provide high quality and rapid service to customers. Incumbent LECs should be required to provide deployment information on a central office-by-central office basis. The Commission should also ensure that such information is not made available to the incumbent's advanced services affiliate unless and until it is made available to its competitors.

For example, NEXTLINK and other competitive carriers need detailed information on which loops are currently deployed with integrated digital loop carrier ("IDLC") and where an incumbent LEC plans to further deploy this technology so that they can take precautionary measures to address provisioning problems associated with the presence of IDLC technology, as described below. Certain incumbents have failed to provide NEXTLINK with information regarding their deployment of such loops. At a minimum, NEXTLINK needs to be able to inform its customers that service may be unavailable or subject to delay because of the incumbent LEC's facilities. When NEXTLINK is not provided with this information on a timely basis, as is usually the case, NEXTLINK and its customers suffer when it cannot provide service as promised to customers who turn out to be served by IDLC facilities. To avoid such situations in the future, the Commission should require ILECs to provide CLECs with timely information about the technology they are and will be deploying.

B. The Commission Should Clarify that Incumbent LECs Must Provision Loops Currently Carried on IDLC Through All Technically Feasible Methods.

Certain incumbent LECs have attempted to restrict NEXTLINK's access to IDLC-delivered loops. In contrast with loops that are engineered as a single pair of copper wires that terminate on a distribution frame in the incumbent LEC's central office before they are connected to a switch, IDLC loops are "integrated" directly into the switch as part of the digital

equivalent of 24 loops. IDLC-deployed loops are often used to serve remote locations or locations where the loop length presents problems for service quality. IDLC is also often used to serve new locations where new facilities are required to be built. Because individual IDLC loops are effectively part of the switch, certain incumbent LECs have argued that it is not technically feasible to provide NEXTLINK with access to the actual IDLC loops.

Such restrictions can significantly limit NEXTLINK's ability to compete because a substantial percentage of the loops in an incumbent LEC's network may use IDLC.[33/] When NEXTLINK wins a customer that must be transferred from a digital loop carrier system, incumbent LECs often return the customer to the pre-existing copper cable plant that the incumbent LEC used before deploying the newer IDLC technology. This method of access may provide NEXTLINK with an inferior connection to that customer, which prevents NEXTLINK from providing service to the customer that is at parity with what that customer formerly received. This in turn leads to problems with service degradation such as an inability to transmit faxes, a reduction in voice quality, or slower data transmission speeds. NEXTLINK estimates that more than 50 percent of its orders that involve the use of these alternatives to IDLC create service quality problems for NEXTLINK's customers.

There are several options that NEXTLINK could use to gain access to IDLC-delivered loops. First, the incumbent LEC could offer NEXTLINK access to the loop at the point where

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[33/] For example, BellSouth presently provides 29 percent of the loops in its network using IDLC. Bell Atlantic deploys IDLC for 6.7 percent of its loops in Pennsylvania. Because Bell Atlantic will not provide NEXTLINK with specific information on which central offices and which loops use IDLC, NEXTLINK cannot determine what percentage of loops use IDLC in NEXTLINK's service area. The figure is likely to be higher than 6.7 percent because NEXTLINK's service area includes rural and remote locations that are ideal for IDLC deployment.

the copper loop is connected to the incumbent's IDLC facilities, which generally occurs at a frame somewhere between the incumbent's central office and the end user. Providing NEXTLINK with access at this point will avoid the problems associated with providing abandoned copper loops at the ILEC central office. ILECs could also unbundle the switch port and provide access to the loop at that location, which avoids splitting the IDLC or removing the loop from the IDLC.

Incumbent LECs could also provide NEXTLINK with access to the digital side of the incumbent's IDLC equipment. NEXTLINK could provision itself or purchase from the incumbent a T-1 line from its facilities to the digital side of the incumbent's IDLC equipment so that NEXTLINK could serve customers over copper loops connected to that IDLC equipment. This method of access would also provide NEXTLINK with parity of access to the existing service and would provide for minimal disruption of service. The incumbent LEC would be able to redirect an unbundled loop to NEXTLINK's T-1 line with a few keystrokes.

To the extent it is technically feasible, an incumbent LEC could provide access to IDLC equipment in its central office through partitioning. Depending on the model and generation of IDLC equipment, the incumbent could provide NEXTLINK and other competitive LECs with an opportunity to serve customers through its IDLC equipment.

As the Commission warned in its Local Competition Order, allowing an incumbent LEC to place restrictions on IDLC loop access may enable the incumbent to "hide" loops in IDLC simply to restrict their availability to competitors like NEXTLINK.[34/] All customers deserve an equal opportunity to benefit from the ability to choose the provider of their telecommunications

[34/] Local Competition Order, 11 FCC Rcd 15499 at ¶ 383 (1996).

services and restrictions on access to IDLC-delivered loops eliminate a choice of providers for those customers currently served by IDLC-delivered loops. The Commission has required incumbent LECs to provide competitors with access to loops even if they have chosen to use IDLC to deploy the loop.[35/] The Commission should use this occasion to clarify that incumbent LECs are required to provision loops currently carried on IDLC through all technically feasible methods. There should be no loss in quality when a loop is unbundled that was previously integrated into an IDLC system, there must be no sacrifice in the timeliness of the delivery of that loop to the competitive LEC, and the incumbent LEC should not be able to impose special construction costs on the competitive LEC.

C. The Commission Should Require Incumbent LECs to Provide Competitive LECs With Access to Loops Served by Remote Switches.

The Commission previously identified the local loop as a network element that incumbent LECs must unbundle at any technically feasible point, but did not require incumbent LECs to unbundle sub-loop elements that would allow competitors to access the loop at the remote terminal.[36/] Certain incumbent LECs are now attempting to use this distinction to deprive NEXTLINK and other competitive carriers of access to loops served by remote switches by arguing that competitive LECs may only access such loops if they are collocated at the remote switch. Collocation at a remote switching location, however, is neither required under the Commission's rules nor technically feasible.

[35/] Id.

[36/] Section 706 NPRM at ¶¶ 152-53 (citing the Local Competition Order, 11 FCC Rcd at ¶¶ 377-79).

From a technical perspective, a remote switching unit is different from other central offices because it is dependent on a host switch in another office for some of its switching intelligence. Although the remote switching unit provides some switching functionality, i.e. connecting calls between end users that both happen to be connected to that remote switching unit, it does not provide the full functionality expected of a local switch, which is provided by the host switch in the central office.

It is the incumbent LEC's decision to deploy a particular loop technology, whether that is a single copper loop, a combination of copper and fiber, or a loop that passes through a remote switch. Whichever facilities the ILEC chooses to deploy, however, it must provide a requesting CLEC with an unbundled loop network element that meets the Commission's definition of an unbundled loop.[37/] The loop in this situation runs from the end user premise (or Network Interface Device, if applicable) to the main distribution frame ("MDF") in the central office of the host switch. It is inconsistent for an incumbent LEC to claim that NEXTLINK must take access to some loops at what is essentially a sub-loop point (the remote switching unit) and deny NEXTLINK such access at other similarly situated sub-loop points (such as the feeder-distribution interface point).

It is not technically necessary for NEXTLINK to collocate at the remote switch in order to gain access to a loop served by that switch. NEXTLINK could acquire special access transport from the central office in which it is collocated to the remote switch office and the incumbent would only have to provide a cross-connect to the facilities at the remote switch.

[37/] The Commission has defined an unbundled loop as "a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and an end user customer premises." 47 C.F.R. § 51.319(a).

Several incumbent LECs have in fact provided NEXTLINK with such access.

Finally, it is not technically feasible for CLECs to collocate at every remote switch. Many remote switching units simply are too small and are provisioned so that it would be impossible for NEXTLINK to collocate in order to access unbundled loops there. These same practical limitations apply equally to virtual collocation. It is also an economic impossibility to collocate at every remote switch. Remote switching units typically serve fewer than 1,000 customers. NEXTLINK generally will already have paid the incumbent hundreds of thousands of dollars to establish collocation space in the central offices and it will be forced to pay additional charges in order to collocate at a remote switch, assuming it is even physically possible for NEXTLINK to do so. NEXTLINK would also be required to pay recurring charges each month for use of each space, no matter how few customers it serves from the switch in issue. NEXTLINK simply cannot justify spending this much capital to serve only 1000 potential loops, even if NEXTLINK immediately could win all of the customers served by those loops. (In reality, NEXTLINK would be incurring such costs to serve only a few customers.) This restriction therefore effectively prohibits competitive LECs from serving the customers served by remote switches, especially in the rural areas where such switches are usually deployed.

The refusal of incumbent LECs to permit NEXTLINK to access unbundled loops served by remote switching units unless it collocates at the remote switch limits NEXTLINK's ability to compete. The Commission should therefore clarify that a competitive LEC does not need to collocate at a remote switch in order to gain access to unbundled loops served by the remote switch if the competitive LEC is collocated at the central office of the host switch for that remote switch. Instead, the incumbent LEC should be required to provide competitive carriers with access to unbundled loops, including multiplexing, cross-connects, and transport to the

competitive LEC's collocation premises at the central office of the remote switch. If the Commission does not require an incumbent LEC to permit a competitive LEC to use such methods to access loops served by a remote switch, then the Commission, at a minimum, should require the incumbent LEC to provide alternative access to the loops served by a remote switch if collocation is impossible due to space or other limitations.

IV. THE COMMISSION SHOULD DECLINE TO "MODIFY" LATA BOUNDARIES

In the Section 706 NPRM, the Commission denied the BOCs' requests to create a single global LATA for packet-switched services. As the Commission recognized, creating such a LATA would be functionally the same as forbearing from section 271 and would "effectively eviscerate section 271 and circumvent the procompetitive incentives for opening the local market that Congress sought to achieve."[38/] The Commission, however, tentatively concluded that "some" modification of LATA boundaries may be necessary to provide customers in rural areas with high speed Internet access. Having correctly decided not to forbear from section 271,[39/] or to make broad changes in LATA boundaries,[40/] the Commission should continue to act prudently by declining to modify rural LATA boundaries.

Any authority the Commission may have to affect LATA boundaries comes from section 3(25)(B), which authorizes the Commission to grant BOC requests for LATA modification.[41/]

[38/] Section 706 NPRM at ¶¶ 81-82.

[39/] Section 706 NPRM at ¶ 77. The Commission correctly concluded that it lacked the statutory authority to do so. Id. at ¶ 69.

[40/] Section 706 NPRM at ¶¶ 81-82.

[41/] 47 U.S.C. § 153(25). Section 3(25) defines a LATA as "a contiguous geographic area" established before the 1996 Act or "established or modified by a Bell operating company ... and
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The relief sought here, however, amounts to an impermissible LATA waiver, not a mere "modification." There are important differences between "waiving" and "modifying" a LATA boundary and those differences have serious legal and policy implications. LATA boundaries are borders demarcating a "contiguous geographic area,"[42/] similar to a border between two states. A LATA boundary may be "modified," thereby altering the shape, size, or contours of the area it contains. On the other hand, a boundary is "waived" when it is effectively eliminated either for a specific service or for all services. While the Commission may have the power to modify a rural LATA to include some people who currently reside in adjacent LATAs, it has no authority to waive, or eliminate, the boundary between two rural LATAs so as to create a single "super LATA."[43/]

When the Commission has exercised its authority to modify LATA boundaries, moreover, it has proceeded cautiously, following the model set by the courts.[44/] In the ELCS Order, for example, the Commission built on precedent established in earlier court decisions

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approved by the Commission," which implies that the Commission has some authority to grant BOC requests to modify LATA boundaries.

[42/] 47 U.S.C. § 153(25).

[43/] The Commission itself has recognized that creating such super-LATAs would contravene the provisions and purpose of the 1996 Act and have a deleterious effect on competition in the local market. Petition for Declaratory Ruling Regarding US WEST Petitions to Consolidate LATAs in Minnesota and Arizona, 12 FCC Rcd 4738 at ¶¶ 27-28 (1997).

[44/] See Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations, 12 FCC Rcd 10646 (1997) ("ELCS Order") (granting 23 out of 24 requests for boundary modifications to permit calls within certain extended local calling service areas to be treated as intraLATA).

granting the BOCs waivers of the AT&T Consent Decree.[45/] The court granted such waivers where they would affect only a small number of access lines, there was a strong community of interest, and the effect on competition would be minimal.[46/] The court was careful to grant waivers only for flat-rate, non-optional ELCS plans that were unlikely to affect toll traffic, and not for services that were similar to the toll services provided by interexchange carriers. Finally, the court was wary of expanding the limited circumstances justifying a waiver for fear that it "could lead to a 'piecemeal dismantling' of the prohibition on the BOCs' provision of interLATA service."[47/]

Broad waivers of LATA boundaries would be inconsistent with the foregoing principles and would render section 271 meaningless. The BOCs' continuing attempts to exploit the Commission's limited authority under section 3(25)(B) are part of a concerted effort to engage in

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[45/] Many, if not all, of the AT&T Consent Decree decisions involved waivers, not modifications. See, e.g., United States v. Western Elec. Co., No. 82-0192, slip op. at 13 (D.D.C. Apr. 28, 1995) ("The question, therefore, is whether the Court should grant the waiver for those areas where there is genuine evidence of competition." (emphasis added)). Matters previously subject to the AT&T Consent Decree are now governed by the 1996 Act. ELCS Order at ¶ 9; Pub. L. 104-104, § 601(a)(1). As set forth above, the Communications Act does not provide the Commission with any waiver authority and the Commission therefore lacks the authority to replicate the court's decisions and issue LATA waivers. Nevertheless, the court decisions provide a useful guide for the Commission to follow when deciding boundary modification issues.

[46/] ELCS Order at ¶ 7 (citing United States v. Western Elec. Co., No. 82-0192 (D.D.C. Jan. 31, 1985); United States v. Western Elec. Co., No. 82-0192 (D.D.C. Dec. 3, 1993); United States v. Western Elec. Co., No. 82-0192 (D.D.C. Dec. 17, 1993)). The court found that a strong community of interest justifying a waiver existed where (1) poll results indicated that customers in the affected area were willing to pay higher rates to be included in an expanded calling area; (2) usage data indicated a high level of calling between the affected exchanges; and (3) narrative statements demonstrated that the two exchanges were part of one community and a lack of local calling between the exchanges caused problems for residents.

[47/] ELCS Order at ¶ 8 (citing United States v. Western Elec. Co., No. 82-0192, slip op. at 4 (D.D.C. May 15, 1993).

precisely the type of "piecemeal dismantling" the court cautioned against. The Commission should not reward such tactics.

Rather, the Commission should ensure that whatever modifications it allows do not provide the BOCs with impermissible, premature LATA relief that would hamper the development of local competition.[48/] Even with the incentive of section 271, the BOCs have been slow to make the critical investments necessary to open up their networks to competition. Allowing the BOCs to transport traffic across LATA boundaries before they have met their obligations under section 271, even in selected areas, will only further diminish their incentive to open their local networks to competition.[49/] If the BOCs truly want to enter the in-region, interLATA data services market, they must comply with the requirements of section 271. The Commission should reconsider its tentative conclusion and decline to "modify" LATA boundaries.

CONCLUSION

The Commission should carefully consider whether its proposal to permit incumbent LECs to provide advanced services through a separate affiliate provides adequate protection given the incentive that incumbents have to discriminate against competitive LECs. The Commission should ensure that sufficient protections are in place before it implements this

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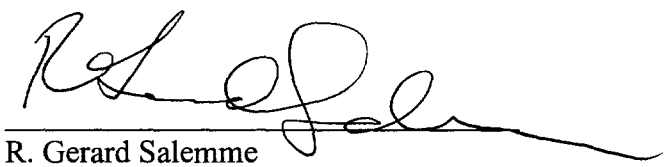
[48/] For example, if the BOCs are allowed to enter the in-region interLATA markets for data services prematurely, they will have substantially reduced incentives to negotiate and implement access and interconnection agreements that provide new entrants with a meaningful opportunity to compete, in violation of the pro-competitive goals of the 1996 Act.

[49/] The Commission should not assume that the risk can be diminished by eliminating LATA boundaries for only one class of service. Once the barrier is broken, it will be very difficult to control the services offered on a modified-LATA basis. This is especially true because advanced (continued on next page)

proposal. The Commission should also adopt national collocation rules in order to remove barriers to entry and speed the deployment of advanced services, and grant NEXTLINK's suggestions for improving the ability of new entrants to gain access to loops necessary to provide advanced services.

Respectfully submitted,

NEXTLINK COMMUNICATIONS, INC.



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services are capable of carrying both voice and data. Thus, a waiver of the LATA rules for advanced services would effectively open the long distance market for voice as well.